

DECLARATION OF HEINZ D. GREETHER

I, Heinz D. Grether, declare that I have personal knowledge of the facts stated herein and declare that each fact is true and correct to the best of my knowledge, as follows:

1. I am the attorney of record in U.S. Patent Application Serial No. 10/758,177.
2. On or about March 26, 2007, a Final Office Action was mailed to the correspondence address of record for U.S. Patent Application Serial No. 10/758,177, which Final Office Action was received.
3. On August 22, 2007, a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences with Request for Extension was sent via U.S. Express Mail to the United States Patent Office at P.O. Box 1450, Alexandria, Virginia 22313-1450. Included with the Notice and Request for Extension was a Credit Card Charge Authorization form authorizing the charging of necessary fees for filing such a Notice of Appeal and Request for Extension.
4. Further, on August 22, 2007, Applicant's Brief on Appeal was also mailed via U.S. Express Mail to the United States Patent Office at P.O. Box 1450, Alexandria, Virginia 22313-1450 in the same Express Mail package containing the Notice of Appeal and Request for Extension.
5. On November 21, 2008, fourteen months after submitting the brief and receiving no Reply Brief from the Examiner, I checked the status of this matter in PAIR. PAIR showed the matter to be abandoned for failure to respond to the Final Office Action; however, I never received the Notice of Abandonment mailed by the PTO on October 18, 2007, even though the address on the Notice of Abandonment was correct.

Further, my normal practice, when dealing with Appeals, is to check the status of the case between twelve and fifteen months after filing a Brief on Appeal due to the normal delays in the appeals process. Had I received the Notice of Abandonment, I would have immediately filed a Petition to Withdraw the Holding of Abandonment. However, since I was not aware that the case had been abandoned due to the failure of the Appeal Brief and Notice of Appeal having been correctly filed in the case at the PTO, and not due to the lack of a properly filed Response on my part, until November 21, 2008, then the accompanying Petition is timely.

I declare further that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, or any issuance therefrom.

December 22, 2008

Date


Heinz D. Grether